

U.S. Department of  
Homeland Security

United States  
Coast Guard



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JUL 31 2020

[REPRESENTATIVE]  
[LAW FIRM]  
[ADDRESS]

RE: Case No. 5732694  
[PARTY]  
[PARTY'S VESSEL]  
\$650.00

Dear [REPRESENTATIVE]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 5732694, which includes your appeal on behalf of your client, [PARTY], as operator of the [PARTY'S VESSEL]. The appeal is from the action of the Hearing Officer in assessing a \$1,300.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR § 83.15(a)	(Rule 15) Failure of a power-driven vessel, which has other vessel on her starboard side, to keep out of way and avoid crossing ahead of other vessel.	\$650.00
33 CFR § 83.08(e)	(Rule 8) When necessary to avoid collision, failure to slacken speed, stop, or reverse.	\$650.00

The violations are alleged in connection with a collision between your client's vessel and two other vessels (the [VESSEL 1] and the [VESSEL 2]) that occurred on the morning of August 15, 2016, on the waters of Hidden Bay, Prince William Sound, Alaska.

I note that the violation citations used throughout this proceeding are to the Inland Navigation Rules. This is a mistake. According to 33 CFR §80.1705, “The 72 COLREGS shall apply on all the sounds, bays, harbors, and inlets of Alaska.” Hence the proper citations are to the International Regulations for Preventing Collisions at Sea (72 COLREGS, or COLREGS). The mistake is harmless, as the texts of Rule 8, Rule 15, and any other Rule mentioned in this decision are identical in the Inland Navigation Rules and the COLREGS.

In your appeal, I perceive the following issues. Concerning the first violation, was the Hearing Officer correct in characterizing the [PARTY’S VESSEL]’s and [VESSEL 2]’s relative positions as a crossing situation subject to Rule 15, in which the [PARTY’S VESSEL] was required to keep out of the way of the [VESSEL 2]? As to the second violation, was the Hearing Officer correct to conclude that slowing, stopping, or reversing the [PARTY’S VESSEL] was action necessary to avoid collision or allow more time to assess the situation? Your appeal is granted in part and denied in part, as discussed below.

Regarding the first violation, Rule 15 provides, “When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.”

The Hearing Officer found, “When [PARTY] made the decision to maneuver his vessel between the [VESSEL 1] and the [VESSEL 2], both of those vessels were standing still in the water.”

Rule 15’s standard “starboard-hand” crossing rule does not apply where the vessel on the starboard hand is stationary, and therefore not on any course. *See, e.g., The Edward G. Murray*, 234 F. 61, 62 (2d Cir. 1916). *See also Trinidad Corp. v. S.S. Keiyoh Maru*, 845 F.2d 818, 823 (9th Cir. 1988) (“In order to be considered a privileged vessel in a crossing situation, it must be on a steady course.”).

Here, the Hearing Officer concluded that [PARTY’S VESSEL] violated Rule 15, because [VESSEL 2] was to [PARTY’S VESSEL]’s starboard, and “the [PARTY’S VESSEL] failed to keep out of the way of the [VESSEL 2] and crossed directly ahead of it, resulting in a collision.” However, the Hearing Officer found that, at the time your client altered course to create a potential crossing situation, the [VESSEL 2] was “standing still in the water.” Hence Rule 15 did not apply.

If Rule 15 did apply, then the [VESSEL 2]’s duty was to maintain her course and speed, in accordance with Rule 17(a)(i) (“Where one of two vessels is to keep out of the way, the other shall keep her course and speed”), thus her duty was to remain stationary. If she had done so, she surely would not have collided with the [PARTY’S VESSEL]. In the event, as the Hearing Officer found, rather than remain stationary, the [VESSEL 2] “inappropriately throttled up in a pinching maneuver,” in concert with the [VESSEL 1].

In short, the Hearing Officer’s conclusion was incorrect; the ensuing collision did not result from a violation of Rule 15 on the part of your client.

This does not mean that your client was right to steer [PARTY'S VESSEL] for the gap between the two other fishing vessels. It simply means that the Hearing Officer's conclusion as to the alleged violation of Rule 15 is not supported by substantial evidence in the record. For this reason, the first charge is dismissed.

As to the second charge, the Hearing Officer's conclusion that slowing, stopping, or reversing the [PARTY'S VESSEL] was necessary to allow more time to assess the situation is supported by substantial evidence in the record.

Rule 8(e) provides, "If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion."

As you agree, the [PARTY'S VESSEL] started to head through a 150-ft. gap between the [VESSEL 1] and the [VESSEL 2]. The video provided supports the Hearing Officer's finding that the [PARTY'S VESSEL] increased speed approximately twelve seconds before the collisions (nearly simultaneous) with both the [VESSEL 1] and the [VESSEL 2], and that this acceleration was a response to their apparent advances to close the gap.

It may be assumed that at the time the [PARTY'S VESSEL] started toward the gap between the two stationary vessels, there was no risk of collision, because those vessels were stationary. However, once the two vessels started to advance, most likely intent on preventing the [PARTY'S VESSEL] from passing through the gap—perhaps at all costs—at the very least, more time was needed to assess the situation. *See* Rule 7 ("Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist. . . . Assumptions shall not be made on the basis of scanty information . . ."). The [PARTY'S VESSEL] did not have the right to accelerate, even if the other vessels were in the wrong; your client as operator accelerated at his own risk.

You argue that "slowing down was not an option—that would result in even more severe damage to the [PARTY'S VESSEL] and her crew. Indeed, [PARTY'S VESSEL] had a skiff in the water behind the vessel with a crewmember in it. Slowing down the vessel would have endangered that crewmember's life." But slowing down twelve seconds before the collision (or refraining from speeding up) would not have endangered the vessel or crew. (As the Hearing Officer found, it was the acceleration beginning twelve seconds before the collision that put the [PARTY'S VESSEL] *in extremis*.) The Hearing Officer was not incorrect to conclude that a violation of Rule 8 occurred.

As acknowledged by the Hearing Officer, both the [VESSEL 1] and the [VESSEL 2] share in the blame for the collision of August 15, 2016. However, it cannot be said that your client, operating the [PARTY'S VESSEL], was innocent. In deciding to navigate his vessel into a small bay already occupied by at least five other fishing vessels, your client evidently decided to take on whatever risks would arise, which included the risk of a mishap that would subject his conduct to scrutiny by the Coast Guard.

I find that there is substantial evidence in the record to support the Hearing Officer's conclusion that the second violation occurred. His decision concerning the penalty amount was neither arbitrary nor capricious and is hereby affirmed.

In accordance with the regulations governing civil penalty proceedings, 33 CFR Subpart 1.07, this decision constitutes final agency action.

Payment of **\$650.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard - Civil Penalties  
P.O. Box 979123  
St. Louis, MO 63197-9000

Interest at the annual rate of 2% accrues from the date of this letter but will be waived if payment is received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Sincerely,

L. I. McCLELLAND  
Civil Penalty Appellate Authority  
By direction of the Commandant

Copy: Coast Guard Hearing Office  
Coast Guard Finance Center